IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.737 OF 2004

IN

SUIT NO.3248 OF 2004

Infrastructure Leasing & Financial Services Ltd. ... Plaintiffs.

vs.

Sun Earth Ceramics Ltd. .... Defendants.

Mr.Rohit Kapadia with V.R.Dhond & Vishal Maheshwari i/b. Negandhi Shah & Himaytullah, for Plaintiffs.

Mr.Z.Andhyorujina i/b. Maneksha & Sethana, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 1st July,2005

P.C.:-

1. This is a notice of motion taken out by the plaintiffs. The plaintiffs have filed the suit for decree of possession of the equipment which is described at Exhibit A. The case of the plaintiffs is that the plaintiffs are the owners of the equipment which was given on lease to the defendants. The defendants have committed default in payment of lease rent, and therefore, the plaintiffs terminated the lease and the plaintiffs have filed suit for decree of

possession of the equipment. It appears that in this suit, a notice of motion was previously taken out seeking same reliefs but in that notice of motion reliefs could not be granted to the plaintiffs because the defendants were declared as relief undertaking under the Bombay Relief Undertakings (Special Provisions) Act,1958. Though the notification issued under the Act previously came to an end, a fresh notification has been issued on 29th October,2004 which will remain in force for the period of one year. The principal defence to this Notice of motion on behalf of the defendants is that because of the provisions of Section 4(1)(a)(iv) of the Bombay Relief Undertakings (Special Provisions) Act, the proceedings in the suit cannot go on and therefore, this Court cannot decide this notice of motion. The learned Counsel for plaintiffs submits that it is clear from the documents produced on record that the equipment is owned by the plaintiffs and it was given on lease to the defendants and that the period of lease was till 31st March,2005. The learned Counsel submits that though the plaintiffs had terminated the lease on 15th May,2002, the plaintiffs for the purpose of seeking a decree of possession of the equipment do not rely on the termination, but the plaintiffs claim decree of possession on the ground that the plaintiffs admittedly are the owners of the equipment and that because the period of lease expired on 31st March,2005, the defendants are not entitled to retain possession of the equipment. On behalf of the defendants on the other hand it is submitted that the plaintiffs had terminated the lease on 15th May,2002 and the present suit has been filed for a decree of possession of the equipment on the basis of alleged termination and as the right on the basis of

which decree of possession is claimed, accrued before the notification was issued under the Act and as the suit has been filed before the notification was issued, and therefore, in terms of provisions under Section 4(1)(a)(iv) the Act, the proceedings cannot go on. It is further submitted that the plaintiffs are not right in stating that the period of lease expired on 31st March,2005, because as the lease was terminated on 15th May,2002 the lease came to an end on that date itself and therefore, there is no question of lease expiring on 31st March,2005. The suit of the plaintiffs is therefore, based on the termination of the lease which event occurred before the notification was issued and therefore, the present proceedings cannot go on. It is further submitted that even if it is assumed that the suit has been filed for a decree of possession on the ground that the plaintiffs are titleholders of the equipment and therefore in its capacity as titleholders the plaintiffs are entitled to a decree of possession, then also according to the defendants, as the plaintiffs became titleholders before the notification was issued, the right of the plaintiffs as titleholders cannot be enforced in view of the above referred provision.

2. In order to appreciate the rival submissions, it is necessary to read the provision of Section 4(1)(a)(iv) of the Act which reads as under:-

> "4.(1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State

> Government may, by notification in the Official Gazette, direct that ---
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> (a) in relation to any relief undertaking and in respect of the period of which the relief undertaking continues as such under sub-section (2) of Section 3 ----
>
> (iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;"

Perusal of the above quoted provision shows that if the suit is instituted on the basis of the right that is accrued to the plaintiffs before the notification in relation to the undertaking was issued then the remedy for enforcement of that right remains suspended and the proceedings cannot be taken up by the Court. It is further clear that if a right on the basis of which the plaintiffs are making a claim has accrued to the plaintiffs after the declaration was made, then remedy for enforcement of that right is not suspended. In so far as the present case is concerned, no doubt, the plaintiffs had terminated the agreement of lease and filed the suit for a decree of possession. The termination of the agreement was

the act of the plaintiffs which resulted in creating certain rights in the plaintiffs and therefore, in my opinion, the plaintiffs are entitled to abandon the rights by abandoning the notice of termination and can claim a decree of possession on the ground that now the lease period is over and the plaintiffs are entitled to possession of the equipment. It is further to be seen here that though the plaintiffs became titleholders in relation to the equipment before the notification was issued, because plaintiffs have entered into a lease agreement and the plaintiffs have delivered the possession of the equipment to the defendants, the plaintiffs did not have right to be in possession of the equipment. When the plaintiffs claim a decree of possession what the plaintiffs are enforcing is their right to be in possession. That right to be in possession accrues to the plaintiffs when the lease period got over and that event occurred after the notification was issued, and therefore, in my opinion, the plaintiffs' suit is maintainable and this notice of motion can be heard by the Court. It is further to be seen here that though there is an option in the lease agreement given to the defendants for renewing the lease and though the renewal clause does not specifically state that the option to renew can be exercised only after the payment of lease, in my opinion, it is implied condition for renewal clause that on the date of exercising the option of renewal, the lessee has paid up-to-date lease money. A lessee cannot remain in arrears of lease money and exercise option of renewal of lease. If the contention advanced on behalf of the defendants is accepted, it would mean that though according to the defendants the lease of equipment in their favour is validly terminated, they will continue

to be in possession in defiance of their obligation to deliver the possession of the equipment and that though they continued to be in possession even though the lease is no more in existence, they will also not pay anything to the owner of the equipment. In my opinion, this cannot be said to be the intention of the legislature in enacting section 4(1)(a)(iv) of the Act. The intention of the legislature is to prevent enforcement of liabilities against the relief undertaking which have accrued before the notification is issued and if the liability to give possession accrued after the notification is issued then there is no protection extended.

3. It is clear that so far as the merit of the matter is concerned, it is not in dispute that there is a lease agreement executed. It is not in dispute that there is an obligation to pay lease rent. It is also not in dispute that there is default committed in payment of rent. Therefore, in my opinion, it is a fit case where Receiver should be appointed. The notice of motion is, therefore granted in the following terms:-

(i) The Receiver of this Court is appointed as Receiver of the lease equipment. The Receiver shall initially take only symbolic possession of the equipment and offer appointment as an agent of the receiver to the defendants to be in possession of the equipment on usual terms and conditions including royalty and security. However, while fixing the royalty, lease rent fixed in the agreement and the arrears be taken into consideration.

(ii) In case defendants do not execute agency agreement within a period of six weeks from the date on which the offer is made to the defendants, the Receiver shall proceed to take physical possession of the equipment, if necessary, by taking police help.

(iii) After taking physical possession of the equipment, the Receiver shall deliver the same in possession of the plaintiffs also as an agent of the receiver but without security and royalty. In that event, the plaintiffs shall be entitled to take out notice of motion seeking further reliefs.

(iv) Till the receiver takes possession in terms of this order, ad-interim order in terms of prayer clause (b) shall operate.

Notice of Motion disposed of.